Pg 10 Line 22

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

WRITTEN TESTIMONY PRESENTED BEFORE THE GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE IN SUPPORT OF AND OPPOSITION TO R.B. 1126

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Statement of Michael J. Brandi, Executive Director & General Counsel
State Elections Enforcement Commission

Chairman Cassano and Chairman Jutila, Vice Chairs Gerratana and Steinberg, Ranking Members McLachlan and Smith, and distinguished Committee members. I am Michael Brandi, the Executive Director & General Counsel of the State Elections Enforcement Commission. I am here to testify in support of and in opposition to RB 1126, which we believe has some extremely worthy components, advances that will keep Connecticut in the forefront of campaign finance reform, but also some elements that are extremely corrosive to our well-regarded campaign finance laws.

As you know, the Commission serves as a watchdog agency, ensuring the public's faith in the integrity of the elections system. Since 2005, Connecticut's legislature has been a leader in campaign finance reform. We have gotten to this place, in large part, because the legislature's past bold, forward thinking. The Citizens Election Program—the CEP—our highly regarded and perennially successful public financing program, is a model for other jurisdictions.

The CEP continues to be a success. In 2014, the Commission approved 287 CEP grants during the Program's fourth run, distributing over $33 million dollars in grants to participating committees. Over 80% of General Assembly candidates participated, and 100% of major party candidates in the statewide general election participated. The CEP continues to achieve its mission of tempering the influence of special interest money in our elections. It remains one of the strongest public financing programs in the country.

It was the establishment of this program, in addition to strict contribution limits, pay-to-play limits for state contractors and lobbyists and a rapid response to *Citizens United* requiring almost

immediate disclosure of campaign related expenditures by SuperPACs and outside special interests that have put us where we are in Connecticut, a model for campaign finance reform.

In 2013, in an attempt to address some of the problems raised by *Citizens United*, the General Assembly passed Public Act 13-180. However, the passage of 13-180 had mixed results. While it did strengthen disclosure in some ways, it also weakened the Commission's ability to enforce the line between independent and coordinated spending. As the 2014 election has shown, this may have dangerously undermined the landmark Citizens' Election Program, and allowed special interest money to seep back into the electoral process.

This year, we have proposed legislation to address some of these exposed problems by creating bright lines to make clear the difference between independence and coordination with candidate, party and political committees within Connecticut. Our proposal sought to advance campaign finance reform and keep Connecticut in the forefront of the effort to maximize disclosure and transparency of outside spenders. Some of our proposal remains in the Raised Bill 1126, and I am here to support those portions of the bill.

Specifically, the bill:

- Adopts the "coordinated spender" language being proposed at the national level as a means to clarify the line between coordinated and independent expenditures, making it easier for campaigns to comply by delineating which groups making expenditures can be considered truly "independent" and which cannot;
- Prevents groups for whom the candidate fundraises from making independent expenditures from the funds to benefit the candidate, unless those funds are completely segregated;
- Prevents groups formed by family members of the candidate from making independent expenditures to benefit the candidate;
- Rolls back the changes in Public Act 13-180 that weakened the Commission's ability to enforce the line between independent and coordinated expenditures;
- Codifies a system for creating independent expenditure political committees that was outlined in the Commission's Declaratory Ruling 2013-02, which addressed the Second

Circuit's *Walsh* decision, regarding the allowance of unlimited contributions to independent expenditure only political committees;

- Codifies the guidance issued by the Commission in Advisory Opinion 2014-03 addressing the U.S. Supreme Court's *McCutcheon* decision, regarding aggregate limits for individual contributors;
- Increases disclosure of independent spenders by drilling down though the "dark money" to see where the money really comes from. Requires disclosure of purportedly independent groups that form new empty "shell" groups to hide the money and evade disclosure; and

Much of the proposal is derived from ones that are being proposed in other jurisdictions. It incorporates the model legislation prepared by Democracy 21 and builds on federal legislation dealing with these issues that was introduced by Representatives David Price (D-NC) and Chris Van Hollen (D-MD) including H.R. 424, the Empowering Citizens Act, and H.R. 425, the Stop Super PAC-Candidate Coordination Act. These bills aim to prohibit coordination between outside spenders and candidates, and outside spenders and parties, and to restrict individual candidate Super PACs. It represents the most forward thinking response to *Citizens United* currently being proposed. We can do this in Connecticut and be first in the nation.

We support these sections of the bill, but there are portions that we must strongly oppose. Specifically important parts of our proposal that were omitted from this bill, but also additional language that was added that serves to weaken the overall campaign finance system.

Raised Bill 1126, as currently presented, severely weakens the proposal by deleting the clarifying definition of *candidate*. Coordination can begin long before a candidate officially becomes a candidate, and our independent expenditure laws should clearly apply to the actions of the person who becomes the candidate. It is difficult to understand why a definition should be removed that simply makes it clear that an incumbent cannot form a SuperPAC in January that spends millions to benefit them in October. The removal of the language denies the clarification needed to assist candidates, incumbents, and future candidates to understand that they cannot coordinate right up until the time that they form a candidate committee, and would avoid misinterpretation leading to long and costly enforcement actions.

The Commission proposed rolling back Public Act 13-180's elimination of caps on organization expenditures by state central party committees for Senate and State Representative CEP candidates. Our proposal would have simply reinstated the limits of approximately $3,500/$10,000 limits for those offices, respectively. This proposal was rejected and is not in this bill. Thus this bill as currently drafted allows for no limits on organization expenditures. There are, however, more types of caps available than the flat cap passed in 2005 when the reform was initially adopted. There are also possible caps on *types* of organization expenditures. We urge this committee to consider alternatives such as this if it rejects the reinstatement of the flat cap.

The bill as currently drafted also does not contain the Commission's proposal to fix the loophole that permits lobbyist solicitation of ad book donations. The Commission was attempting to address what might have been an unintentional oversight in Public Act 13-180, but the removal of our language may indicate it wasn't a drafting oversight, but instead was intended to have lobbyists again be able to solicit their clients to put money into party-related committees. This strikes at the heart of the lobbyist restrictions, and leaves the back door wide open for special interest money to flow to political committees and party committees—and thus indirectly to CEP candidates via the open spigot of organization expenditures. Essentially, it allows communicator lobbyists to solicit their clients to buy ads in ad books—ads that the communicator lobbyist himself is prohibited from purchasing. We strenuously oppose this omission from our proposal.

Also, there are sections of the bill that are new to us and which we cannot support without knowing the value that they add, when they appear to us to be harmful.

(Sections 19 – 21 of SB 1126) This appears to be an effort to make it more difficult for petitioning/minor parties to qualify under the Citizens' Election Program. This may subject the Program to another constitutional challenge like that brought in the *Green Party* litigation, where it was claimed the CEP treated minor party and petitioning candidates unfairly. We oppose this effort.

(Sec. 25 of SB 1126) This provision essentially dissolves accountability for half of those receiving public funds each cycle – and lets them know ahead of time that there will be no post-election

review of their spending. For those treasurers who are audited each year, it removes all ability of the Commission to grant extensions of time to provide documents.

When our ability to review the candidate committees post-election was cut in half during the 2011 consolidation, the law instated a random lottery to select committees for review. Although it leaves half the committees un-reviewed every election, it his has been largely effective in that it keeps all committees on notice that they might be reviewed. Now they will not be subject to the lottery if they have been reviewed in the previous cycle, eliminating any deterrent effect the lottery was designed to have.

Moreover, the way that these changes come together does even more damage than that. The language in lines 1199 & 1200, when combined with other sections of the statute, operates in practical effect to give the Commission's staff only from May 31 to August 31 to complete all audits. This provision will require a large fiscal note to allow the Commission to hire enough staff and pay necessary overtime.

Treasurers could no longer be granted extensions of time to gather their documents. The Commission is currently able to support and work with treasurers who have made a mistake and misplaced lost important receipts, giving them time and assistance to get copies from vendors and demonstrate that the expense was permissible. Under this language, the Commission will have to hold treasurers to firm production deadlines without any flexibility.

Simply put, what may be intended to help treasurers will become a nightmare for them.

Sec. 26: Repeal of CEP language prohibiting giving public funds to party committees:

Under 9-706-2 (b) (8) contributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee are impermissible. It is unclear why this rule would be repealed. To the extent it is meant to allow a candidate who received public funds to give money to a party committee rather than use it for their own candidacy, it should not be permitted. If this is meant only to help treasurers reimburse party committees for shared expenses, we strongly believe

there are better ways to draft clarifications as opposed to the possible unintended consequences of repealing this provision.

We understand that this is a work in progress and the legislative session is long. We look forward to continuing to work with this Committee and the legislature as a whole.

Thank you for this opportunity to present this testimony.